

SEP 23 1989

JOSEPH F. SZANIO, JR.
CLERKNo. 89-180
(b)

IN THE

Supreme Court of the United States**October Term, 1989****CITY OF GARFIELD HEIGHTS,
*Petitioner,*****vs.****THE OHIO CIVIL RIGHTS COMMISSION
and WILLIAM ASAD,
*Respondents.*****ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF OHIO****BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI**

ANTHONY J. CELEBREZZE, JR.
Attorney General of Ohio
CHARLES E. COOK, *Counsel of Record*
Assistant Attorney General
Civil Rights Section
12th Floor State Office Building
615 West Superior Avenue
Cleveland, Ohio 44113-1899
(216) 622-3030

DAVID E. MACK
WILHELM G. SPIEGELBERG
City of Garfield Heights
5555 Turney Road
Garfield Heights, Ohio 44125
(216) 475-1100
Attorneys for Petitioner

LULA M. ANDERSON, *Of Counsel*
Chief, Civil Rights Section
LeVeque Tower—Suite 1718
50 West Broad Street
Columbus, Ohio 43215
(614) 466-7900
Attorneys for Appellee
Ohio Civil Rights Commission

QUESTIONS PRESENTED FOR REVIEW

1. Did the Supreme Court of the State of Ohio violate Petitioner's Fourteenth Amendment due process rights in denying review of the Eighth District Court of Appeals decision which determined Respondent could prevail over Petitioner on the basis that Petitioner failed to give Respondent proper notice of its appeal of an Ohio Civil Rights Commission Final Order pursuant to Rules 3(A) and 4(A) of the Ohio Rules of Civil Procedure?
2. Where reliable, probative and substantial evidence on the record supports the Ohio Civil Rights Commission's findings of discrimination pursuant to Ohio Revised Code §4112.02(A), as affirmed by two Cuyahoga County, Ohio Courts: the Court of Common Pleas and the Court of Appeals, Eighth District, and there is no federal question involved is there any reason for the Supreme Court of the United States to review the state court's decision?
3. Did the Eighth District Court of Appeals err and violate Petitioner's Fourteenth Amendment right to equal protection under the law in failing to find that the findings of the Ohio Civil Rights Commission were invalid because they were filed after the time period provided by the Ohio Administrative Code?

TABLE OF CONTENTS

Questions Presented for Review.....	i
Table of Authorities.....	v
Statutes, Rules and Constitution Involved	1
Statement of the Case.....	2
Reasons for Denying the Writ.....	5
I. Due Process. The Supreme Court of the State of Ohio did not violate Petitioner's Fourteenth Amendment due process rights in denying review of the Eighth District Court of Appeals decision which determined Respondent could prevail over Petitioner on the basis that Petitioner failed to give Respondent proper notice of its appeal of an Ohio Civil Rights Commission's Final Order pursuant to Rules 3(A) and 4(A) of the Ohio Rules of Civil Procedure	5
II. Where reliable, probative and substantial evidence on the record supports the Ohio Civil Rights Commission's findings of discrimination pursuant to Ohio Revised Code §4112.02(A), as affirmed by two Cuyahoga County, Ohio Courts: the Court of Common Pleas and the Court of Appeals, Eighth District, and there is no federal question involved, there is no reason for the Supreme Court of the United States to review the state court's decision	8
III. The Eighth District Court of Appeals did not err and violate Petitioner's Fourteenth Amendment right to equal protection under	

the law in failing to find that the findings of the Ohio Civil Rights Commission were invalid because they were filed after the due date	9
Conclusion	10
Appendix:	
Ohio Revised Code, Section 4112.02(A) and (I).....	A1
Ohio Revised Code, Section 4112.05(B)	A1
Ohio Revised Code, Section 4112.06.....	A3
Ohio Rules of Civil Procedure, Rule 3(A)	A6
Ohio Rules of Civil Procedure, Rule 4(A) & 4(B) ...	A9
Constitution of the State of Ohio Art. IV, Section 5(B).....	A11

TABLE OF AUTHORITIES

Cases

<i>City of Cleveland v. Ohio Civil Rights Commission, et al.</i> , 43 Ohio App. 3d 153 (1988)	7
<i>City of Cleveland v. Ohio Civil Rights Commission, et al.</i> , No. 88-461 (State of Ohio Sup. Ct., May 11, 1988)	7
<i>City of Garfield Heights v. William Asad, et al.</i> , No. 102724 (Cuyahoga County C.C.P. Sept. 16, 1987) (unreported).	3,8,9
<i>City of Garfield Heights v. William Asad, et al.</i> , No. 54615 (Cuyahoga County Ct. App. Nov. 10, 1988) (unreported).	4,7,8
<i>City of Garfield Heights v. Ohio Civil Rights Commission, et al.</i> , No. 89-30 (State of Ohio Sup. Ct. Feb. 15, 1989) reh'g. denied (March 22, 1989) .	4,7
<i>James v. Appel</i> , 192 U.S. 129 (1904)	5
<i>Lindsey v. Mormet</i> , 405 U.S. 56 (1972)	5
<i>Standard Oil Co. v. Missouri</i> , 224 U.S. 270 (1912)	5

Statutes, Rules and Constitution

Ohio Revised Code, Section 4112.02(A).....	1,8
Ohio Revised Code, Section 4112.02(I)	1,2
Ohio Revised Code, Section 4112.05(B)	1,2
Ohio Revised Code, Section 4112.06.....	1,6
Ohio Rules of Civil Procedure, Rule 3(A).....	1,5,6, 7,8,10
Ohio Rules of Civil Procedure, Rule 4(A) & 4(B)....	1,5,6, 7,8,10
Constitution of the State of Ohio, Article IV, Section 5(B)	1,6

No. 89-180

IN THE

Supreme Court of the United States

October Term, 1989

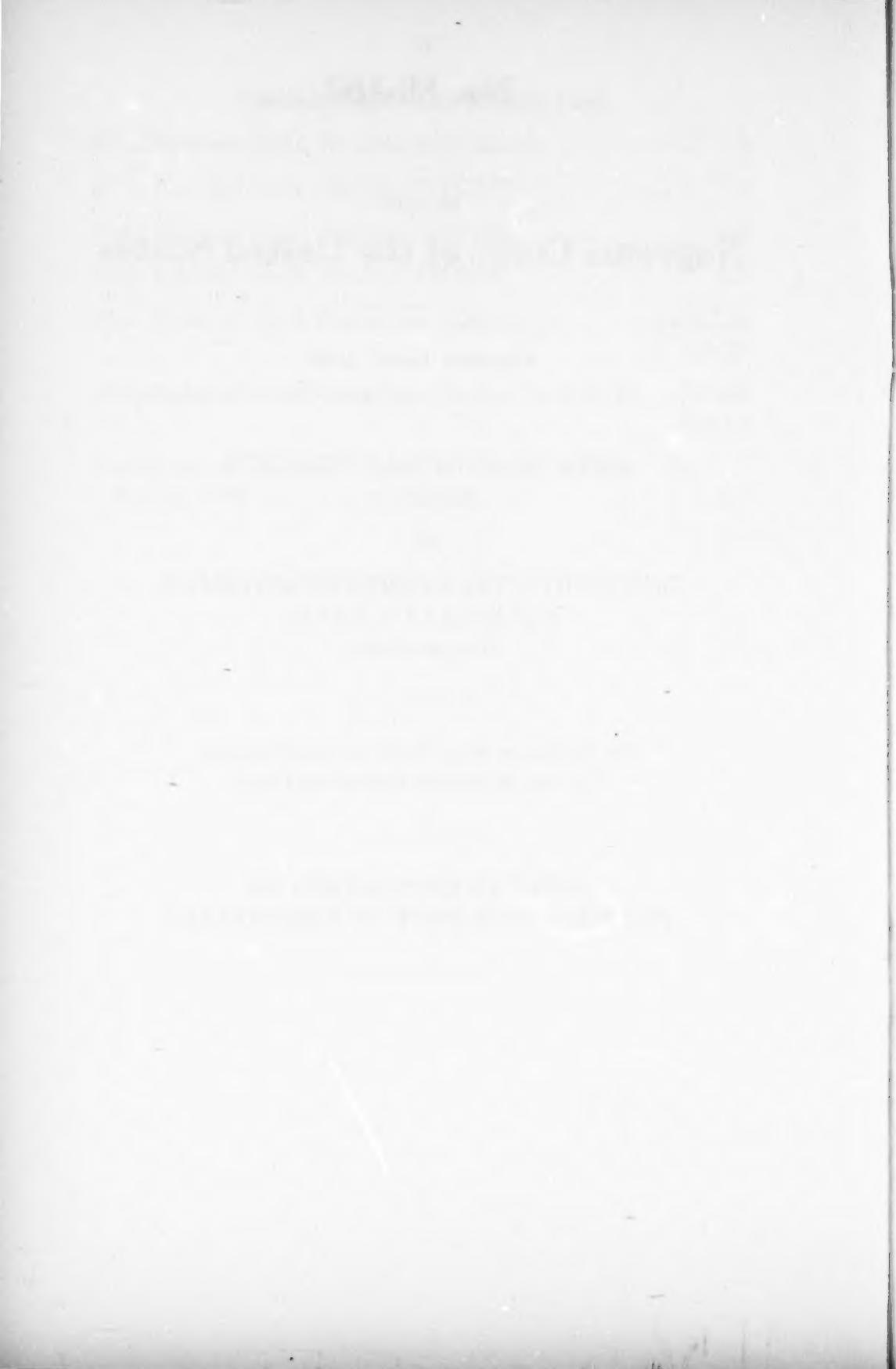
CITY OF GARFIELD HEIGHTS,
Petitioner,

vs.

**THE OHIO CIVIL RIGHTS COMMISSION
and WILLIAM ASAD,**
Respondents.

**ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF OHIO**

**BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI**



**STATUTES, RULES AND
CONSTITUTION INVOLVED***

Ohio Revised Code, 4112.02(A) and (I)
Ohio Revised Code, Section 4112.05(B)
Ohio Revised Code, Section 4112.06
Ohio Rules of Civil Procedure, Rule 3(A)
Ohio Rules of Civil Procedure, Rule 4(A) and 4(B)
Constitution of the State of Ohio, Article IV,
Section 5(B)

* The text of these provisions is reproduced in full in the Appendix.

STATEMENT OF THE CASE

This action arose out of a charge affidavit filed by William Asad with the Equal Employment Opportunity Commission (hereinafter "EEOC"), on May 24, 1983. It was deferred to and received by the Cleveland Regional Office of the Ohio Civil Rights Commission (hereinafter "Commission"), on June 3, 1983. In his charge affidavit, Asad alleged that on May 18, 1983, the City of Garfield Heights (hereinafter "City"), refused to hire him for the position of firefighter in retaliation for his having filed previous charges of discrimination with the EEOC against his previous employer, the Brooklyn Fire Department.

After receiving the charge of discrimination, the Commission conducted a preliminary investigation pursuant to Section 4112.05(B) of the Ohio Revised Code (App. A1). On December 29, 1983, the Commission determined it was probable that the City committed an unlawful discriminatory practice in violation of Revised Code 4112.02(I). Subsequent to the finding of probable cause, the Commission made good faith efforts to conciliate the charge filed by Mr. Asad, but such efforts failed.

On May 15, 1984, the Commission issued Complaint and Notice of Hearing No. 4050. The City filed its Answer to the Complaint on June 15, 1984. On September 24 and 25, 1984 and October 26, 1984, a bifurcated hearing was held before Franklin A. Martens, Esq., a duly appointed Hearing Examiner of the Commission.

After receiving the hearing transcript, Commission counsel filed its brief on December 31, 1984 and the City filed its brief on February 13, 1985. The Commission

filed a reply brief on February 22, 1985. On August 14, 1985, the Hearing Examiner issued his report. The Examiner concluded that the City had violated Chapter 4112 of the Revised Code when it rejected Mr. Asad for employment as a firefighter. In his Report, the Hearing Examiner made specific recommendations regarding an offer of employment and back pay. On August 30, 1985, the City filed objections to the Examiner's Report. The Commission approved the recommendations of the Hearing Examiner and issued its Findings of Fact, Conclusions of Law and Order on November 14, 1985.

The City filed a petition for judicial review on December 24, 1985, naming only Mr. Asad as a Defendant. The City served both Mr. Asad and the Ohio Civil Rights Commission by ordinary mail. Neither was served by the Clerk of Courts.

The Commission filed a Motion to Dismiss for lack of subject matter jurisdiction. The Court denied this motion on January 16, 1987, and established a briefing schedule. The Commission received Appellant's brief on January 30, 1987. During a status call on March 2, 1987, the Court granted the Commission leave to file its brief instanter.

On September 16, 1987, the Honorable Burt W. Griffin, Judge, Court of Common Pleas, Cuyahoga County, Ohio issued a Judgment Entry *City of Garfield Heights v. William Asad, et al.*, No. 102724 (Cuyahoga County C.C.P. Sept. 16, 1987) (unreported), stating that "since the decision of the Commission is supported by reliable, probative and substantial evidence and in accordance with the law, the decision of the Ohio Civil Rights Commission is affirmed." (Pet. App. B-1). However, Judge Griffin did not rule on the issue of proper service.

The City of Garfield Heights timely appealed Judge Griffin's decision to the Court of Appeals of Ohio, Eighth District, Cuyahoga County. On November 10th, 1988, the Court of Appeals dismissed the appeal, and in so doing, noted that proper service was never made on the Respondents by the City, thereby, denying proper jurisdiction of subject matter to the Courts. *City of Garfield Heights v. William Asad, et al.*, No. 54615 (Cuyahoga County Ct. App. Nov. 10, 1988) (unreported).

The City timely appealed to the Supreme Court of Ohio and on February 15, 1989, the Supreme Court of Ohio dismissed the appeal *sua sponte* for the reason that no substantial constitutional question existed therein. *City of Garfield Heights v. Ohio Civil Rights Commission, et al.*, No. 89-30 (State of Ohio Supt. Ct. Feb. 15, 1989) (unreported) (Pet. App. D-1).

The City timely filed a request for a rehearing. On March 22, 1989 the Supreme Court of Ohio ordered that the rehearing be denied. *City of Garfield Heights v. Ohio Civil Rights Commission, et al.*, No. 89-30 (State of Ohio Sup. Ct. Feb. 15, 1989) (unreported) *reh'g denied* (March 22, 1989) (Pet. App. E-1).

The City of Garfield Heights, Ohio now petitions the Supreme Court of the United States for a Writ of Certiorari, which the Respondents, Ohio Civil Rights Commission and William Asad oppose.

REASONS FOR DENYING THE WRIT

I. Due Process. The Supreme Court of the State of Ohio did not violate Petitioner's Fourteenth Amendment due process rights in denying review of the Eighth District Court of Appeals decision which determined Respondent could prevail over Petitioner on the basis that Petitioner failed to give Respondent proper notice of its appeal of an Ohio Civil Rights Commission's Final Order pursuant to Rules 3(A) and 4(A) of the Ohio Rules of Civil Procedure.

The United States Supreme Court in the past has indicated its views on the subject of the Fourteenth Amendment due process rights which are guaranteed by the United States Constitution.

The Court stated the following:

"Rehearings or new trials are not essential to due process of law, either in judicial or administrative proceedings." *James v. Appel*, 192 U.S. 129 (1904).

"Point at which litigation must cease can be determined by legislative power of state, for right of appeal is not essential to due process of law." *Standard Oil Co. v. Missouri*, 224 U.S. 270 (1912).

"If full and fair trial on merits is provided, due process clause of Fourteenth Amendment does not require state to provide appellate review." *Lindsey v. Mormet*, 405 U.S. 56 (1972).

In the case sub judice, the petitioner, City of Garfield Heights was accorded and had the advantage of an evidentiary hearing at the Commission level; exercised its right of judicial review at the Court of Common Pleas level; further exercised its right of appeal at the Appellate Court level; exercised its right of appeal at the State of Ohio Supreme Court level; and now the

petitioner is exercising its rights to file a "Petition for Writ of Certiorari" in the Supreme Court of the United States.

The Ohio Constitution in Section 5(B) of Article IV conferred rule making power upon the Supreme Court of Ohio. The latest Supreme Court review of the Rules of Civil Procedure was submitted to the 108th General Assembly in 1969 and approved by said General Assembly in 1970.

Rule 3(A) of the Ohio Rules of Civil Procedure states that: "A civil action is commenced by filing a complaint with the court if service is obtained within one year from such filing." (App. A6).

Rule 4(A) of the Ohio Rules of Civil Procedure states that: "Upon filing of the complaint the clerk shall forthwith issue a summons for service upon each defendant listed in the caption. Upon request of the plaintiff separate or additional summons shall issue at any time against any defendant." (App. A9).

When the petitioner appealed the Ohio Civil Rights Commission's final order to the Court of Common Pleas, the petitioner failed to comply with Rules 3(A) and 4(A) of the Ohio Rules of Civil Procedure thereby not perfecting good service.

Although the Court of Common Pleas failed to rule on the "service issue," the Eighth District Court of Appeals ruled on that issue by stating an action for judicial review pursuant to R.C. 4112.06 may be commenced only by service through the clerk of courts in accordance with Civil Rules 3 and 4 of Ohio Rules of Civil Procedure (App. A6-A10). The Court of Appeals further stated that since the action was not properly commenced below, the court never acquired jurisdiction

of the subject matter. The Court of Appeals dismissed the City of Garfield Heights' appeal. *City of Garfield Heights*, No. 54615 (Cuyahoga Ct. App. Nov. 10, 1988) (Pet. App. C-1). The City timely appealed to the Supreme Court of Ohio where the appeal was dismissed (Pet. App. D-1), and re-hearing denied. *City of Garfield Heights*, No. 89-30 (State of Ohio Sup. Ct. Feb. 15, 1989), *reh'g. denied* (March 22, 1989) (Pet. App. E-1).

The same issue pertaining to applicability of Civil Rules 3(A) and 4(A) of the Ohio Rules of Civil Procedure was previously ruled upon by the Eighth District Court of Appeals in *Cleveland v. Ohio Civil Rights Commission*, 43 Ohio App. 3rd 153 (1988). This decision was followed by the Court of Appeals for the Eighth District in the present case the *City of Garfield Heights*, No. 54614 (Cuyahoga County Ct. App., Nov. 10, 1988) which held that because of non-compliance with these rules the court never acquired jurisdiction of the subject matter. (*Id.*) That case was also appealed to the Supreme Court of Ohio, the appeal was dismissed and was overruled and rehearing denied. *City of Cleveland*, No. 88-461 (State of Ohio Sup. Ct. May 11, 1988).

II. Where reliable, probative and substantial evidence on the record supports the Ohio Civil Rights Commission's findings of discrimination pursuant to Ohio Revised Code § 4112.02(A), as affirmed by two Cuyahoga County, Ohio Courts: the Court of Common Pleas and the Court of Appeals, Eighth District, and there is no federal question involved, there is no reason for the Supreme Court of the United States to review the state court's decision.

The Honorable Burt W. Griffin, Judge of the Court of Common Pleas, Cuyahoga County, Ohio stated that there was ample probative, reliable, and substantial evidence to support the Ohio Civil Rights Commission's findings. *City of Garfield Heights v. Asad*, No. 102724 (Cuyahoga County C.C.P. Sept. 16, 1987) (Pet. App. B-1).

The City of Garfield Heights had its case heard on the merits at the hearing level before the Commission; and, had its case reviewed on the merits before the Court of Common Pleas (Pet. App. B-1) and the Court of Appeals, Eighth District (Pet. App. C-1) both of Cuyahoga County, Ohio. Both Courts held against the City of Garfield Heights on issues appealed on the merits. Although, the Court of Common Pleas did not rule on the procedural issue involving Civil Rules 3(A) and 4(A) of the Ohio Rules of Civil Procedure, the Court of Appeals Eighth District did, and, held that non-compliance with those rules denied the courts jurisdiction of the subject-matter. *City of Garfield Heights v. Asad*, No. 54615 (Cuyahoga County Ct. App. Nov. 10, 1988).

III. The Eighth District Court of Appeals did not err and did not violate Petitioner's Fourteenth Amendment right to equal protection under the law in failing to find that the findings of the Ohio Civil Rights Commission were invalid because they were filed after the due date.

The Petitioner's rights under the Fourteenth Amendment of the U.S. Constitution were not violated because the Eighth District Court of Appeals (Pet. App. C-1) did hold that the Commission's finding, although filed after the due date, were not invalid. The court stated that it failed to see how the delay implicated the Commission's jurisdiction. Judge Burt W. Griffin of the Court of Common Pleas, *City of Garfield Heights v. Asad*, No. 102724 (Cuyahoga County, C.C.P. Sept. 16, 1987), stated that neither the Ohio Administrative Code nor the Ohio Revised Code provide that failure of the hearing examiner to file timely his written findings will render those findings or their adoption by the Commission invalid, *Id.*

CONCLUSION

The Petitioner, City of Garfield Heights, Ohio has utilized the court system of the State of Ohio to the fullest extent in litigating its cause of action. The Petitioner was afforded a full evidentiary hearing before a Hearing Examiner at the administrative level in which the Commission made a finding of discrimination.

The Petitioner appealed the Commission's discrimination finding to the Court of Common Pleas but failed to comply with Civil Rules 3(A) and 4(A) of the Ohio Rules of Civil Procedure. The Court of Common Pleas did not rule on the procedural rules violation, but did affirm the Commission's findings of discrimination. The Petitioner appealed the Court of Common Pleas decision to the Court of Appeals Eighth District, Cuyahoga County, which after discussing the merits of the case and Civil Rules 3(A) and 4(A), dismissed the appeal. This dismissal resulted in the Petitioner filing an appeal in the Supreme Court of Ohio which court dismissed the appeal *sua sponte* for the reason that no substantial constitutional question existed therein. Re-hearing was also denied.

Accordingly, Respondent, the Ohio Civil Rights Commission, respectfully urges the Supreme Court of the United States to deny the Petition for Writ of Certiorari of the City of Garfield Heights, Ohio for the reason, that no constitutional question exists therein.

Respectfully submitted,

ANTHONY J. CELEBRFZZE, JR.

Attorney General

CHARLES E. COOK, *Counsel of Record*

Assistant Attorney General

Civil Rights Section

State Office Building

12th Floor

615 West Superior Avenue

Cleveland, Ohio 44113-1899

(216) 622-3030

LULA M. ANDERSON, *Of Counsel*

Chief, Civil Rights Section

Lincoln LeVeque Tower - Suite 1718

50 West Broad Street

Columbus, Ohio 43215

(614) 466-7900

Attorneys for Respondent

Ohio Civil Rights Commission

APPENDIX
OHIO REVISED CODE

§4112.02 Unlawful discriminatory practices.

It shall be unlawful discriminatory practice:

(A) For any employer, because of the race, color, religion, sex, national origin, handicap, age, or ancestry of any person, to discharge without just cause, to refuse to hire, or otherwise to discriminate against that person with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment.

* * * * *

(I) For any person to discriminate in any manner against any other person because that person has opposed any unlawful practice defined in this section, or because that person has made a charge, testified, assisted, or participated in any manner in any investigation, proceeding, or hearing under sections 4112.01 to 4112.07 of the Revised Code.

§4112.05(B)

(B) Whenever it is charged in writing and under oath by a person, referred to as the complainant, that any person, referred to as the respondent, has engaged or is engaging in unlawful discriminatory practices, or upon its own initiative in matters relating to any of the unlawful discriminatory practices enumerated in division (A), (B), (C), (D), (E), (F), (I), or (J) of section 4112.02, or section 4112.021 [4112.02.1] of the Revised Code, the commission may initiate a preliminary investigation. Such charge shall be filed with the commission within six months after the alleged unlawful discriminatory

practices are committed. If it determines after such investigation that it is not probable that unlawful discriminatory practices have been or are being engaged in, it shall notify the complainant that it has so determined and that it will not issue a complaint in the matter. If it determines after such investigation that it is probable that unlawful discriminatory practices have been or are being engaged in, it shall endeavor to eliminate such practices by informal methods of conference, conciliation, and persuasion. Nothing said or done during such endeavors shall be disclosed by any member of the commission or its staff or be used as evidence in any subsequent proceeding. If, after such investigation and conference, the commission is satisfied that any unlawful discriminatory practice of the respondent will be eliminated, it may treat the complaint as conciliated, and entry of such disposition shall be made on the records of the commission. If the commission fails to effect the elimination of such unlawful discriminatory practices and to obtain voluntary compliance with Chapter 4112. of the Revised Code, or, if the circumstances warrant, in advance of any such preliminary investigation or endeavors, and if, with respect to an alleged violation of division (H) of section 4112.02 of the Revised Code, the commission finds that the complainant acted with intention of fulfilling any contracts or agreements he was seeking, the commission shall issue and cause to be served upon any person or respondent a complaint stating the charges in that respect and containing a notice of hearing before the commission, a member thereof, or a hearing examiner at a place therein fixed to be held not less than ten days after the service of such complaint. Such place of hearing shall be within the county where the alleged unlawful discriminatory practice has occurred or where the

respondent resides or transacts business. The attorney general shall represent the commission at such hearing and present the evidence in support of the complaint. Any complaint issued pursuant to this section must be so issued within two years after the alleged unlawful discriminatory practices were committed.

4112.06 Judicial review

(A) Any complainant, or respondent claiming to be aggrieved by a final order of the commission, including a refusal to issue a complaint, may obtain judicial review thereof, and the commission may obtain an order of court for the enforcement of its final orders, in a proceeding as provided in this section. Such proceeding shall be brought in the common pleas court of the state within any county wherein the unlawful discriminatory practice which is the subject of the commission's order was committed or wherein any respondent required in the order to cease and desist from an unlawful discriminatory practice or to take affirmative action resides or transacts business.

(B) Such proceedings shall be initiated by the filing of a petition in court as provided in division (A) of this section and the service of a copy of the said petition upon the commission and upon all parties who appeared before the commission. Thereupon the commission shall file with the court a transcript of the record upon the hearing before it. The transcript shall include all proceedings in the case, including all evidence and proffers of evidence. The court shall thereupon have jurisdiction of the proceeding and of the questions determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper and to make and enter, upon the record and such

additional evidence as the court has admitted, an order enforcing, modifying and enforcing as so modified, or setting aside in whole or in part, the order of the commission. The court shall require the posting of a sufficient bond before granting temporary relief or a restraining order in a case involving a violation of division (H) of section 4112.02 of the Revised Code.

(C) An objection that has not been urged before the commission shall not be considered by the court, unless the failure or neglect to urge such objection is excused because of extraordinary circumstances.

(D) The court may grant a request for the admission of additional evidence when satisfied that such additional evidence is newly discovered and could not with reasonable diligence have been ascertained prior to the hearing before the commission.

(E) The findings of the commission as to the facts shall be conclusive if supported by reliable, probative, and substantial evidence on the record and such additional evidence as the court has admitted considered as a whole.

(F) The jurisdiction of the court shall be exclusive and its judgment and order shall be final subject to appellate review. Violation of the court's order shall be punishable as contempt.

(G) The commission's copy of the testimony shall be available at all reasonable times to all parties without cost for examination and for the purposes of judicial review of the order of the commission. The petition shall be heard on the transcript of the record without requirement of printing.

(H) If no proceeding to obtain judicial review is instituted by a complainant, or respondent within thirty days from the service of order of the commission pursuant to this section, the commission may obtain a decree of the court for the enforcement of such order upon showing that respondent is subject to the commission's jurisdiction and resides or transacts business within the county in which the petition for enforcement is brought.

(I) All suits brought under this section shall be heard and determined as expeditiously as possible.

OHIO RULES OF CIVIL PROCEDURE

Civ. R. 3

Commencement of Action; Venue

(A) Commencement.

A civil action is commenced by filing a complaint with the court, if service is obtained within one year from such filing upon a named defendant, or upon an incorrectly named defendant whose name is later corrected pursuant to Rule 15(C), or upon a defendant identified by a fictitious name whose name is later corrected pursuant to Rule 15(D).

(B) Venue: where proper.

Any action may be venued, commenced and decided in any court in any county. When applied to county and municipal courts "county" as used in this rule shall be construed where appropriate, as the territorial limits of those courts. Proper venue lies in any one or more of the following counties:

- (1) The county in which the defendant resides;
- (2) The county in which the defendant has his principal place of business;
- (3) A county in which the defendant conducted activity which gave rise to the claim for relief;
- (4) A county in which a public officer maintains his principal office if suit is brought against him in his official capacity;
- (5) A county in which the property, or any part thereof, is situated if the subject of the action is real property or tangible personal property;
- (6) The county in which all or a part of the claim for relief arose; or, if the claim for relief arose upon a river, or other watercourse, or a road, which is the boundary of

the state, or of two or more counties, in any county bordering on such river, watercourse, or road, and opposite to the place where the claim for relief arose;

(7) In actions described in Rule 4.3 (out-of-state service) in the county where plaintiff resides;

(8) In an action against an executor, administrator, guardian, or trustee, in the county in which he was appointed;

(9) In actions for divorce, annulment or for alimony in the county in which the plaintiff is and has been a resident for at least ninety days immediately preceding the filing of the complaint;

(10) If there is no available forum in subsections (1) through (9) of this subdivision, in the county in which plaintiff resides; has his principal place of business or regularly and systematically conducts business activity;

(11) If there is no available forum in subsections (1) through (10) of this subdivision:

(a) In a county in which defendant has property or debts owing to him subject to attachment or garnishment;

(b) In a county in which defendant has appointed an agent to receive service of process or wherein such agent has been appointed by operation of law.

(C) Change of venue.

(1) When an action has been commenced in a county other than stated to be proper in subdivision (B) of this rule, upon timely assertion of the defense of improper venue as provided in Rule 12, the court shall transfer the action to a county stated to be proper in subdivision (B) of this rule.

(2) When an action is transferred to a county which is proper, the court may assess costs, including reasonable attorney fees, to the time of transfer against the party who commenced the action in a county other than stated to be proper in subdivision (B) of this rule.

(3) Before entering a default judgment in an action in which the defendant has not appeared, the court may, if it finds that the action has been commenced in a county other than stated to be proper in subdivision (B) of this rule, transfer the action to a county which is proper. The clerk of the court to which the action is transferred shall notify the defendant of the transfer, stating in the notice that the defendant shall have twenty-eight days from the receipt of the notice to answer in the transferred action.

(4) Upon motion of any party or upon its own motion the court may transfer any action to an adjoining county within this state when it appears that a fair and impartial trial cannot be had in the county in which the suit is pending.

(D) Venue: no proper forum in Ohio.

When a court, upon motion of any party or upon its own motion, determines: (1) that the county in which the action is brought is not a proper forum; (2) that there is no other proper forum for trial within this state; and (3) that there exists a proper forum for trial in another jurisdiction outside this state, the court shall stay the action upon condition that all defendants consent to the jurisdiction, waive venue, and agree that the date of commencement of the action in Ohio shall be the date of commencement for the application of the statute of limitations to the action in that forum in another jurisdiction which the court deems to be the proper

forum. If all defendants agree to the conditions, the court shall not dismiss the action, but the action shall be stayed until the court receives notice by affidavit that plaintiff has recommenced the action in the out-of-state forum within sixty days after the effective date of the order staying the original action. If the plaintiff fails to recommence the action in the out-of-state forum within the sixty day period, the court shall dismiss the action without prejudice. If all defendants do not agree to or comply with the conditions, the court shall hear the action.

If the court determines that a proper forum does not exist in another jurisdiction, it shall hear the action.

* * * * *

Civ. R. 4

Process: summons

(A) Summons: issuance.

Upon the filing of the complaint the clerk shall forthwith issue a summons for service upon each defendant listed in the caption. Upon request of the plaintiff separate or additional summons shall issue at any time against any defendant.

(B) Summons: form; copy of complaint.

The summons shall be signed by the clerk, contain the name and address of the court and the names and addresses of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the times within which these rules or any statutory provision require the defendant to appear and defend, and shall

notify him that in case of his failure to do so, judgment by default will be rendered against him for the relief demanded in the complaint. Where there are multiple plaintiffs or multiple defendants, or both, the summons may contain, in lieu of the names and addresses of all parties, the name of the first party on each side and the name and address of the party to be served.

A copy of the complaint shall be attached to each summons. The plaintiff shall furnish the clerk with sufficient copies.

(C) Summons: plaintiff and defendant defined.

For the purpose of issuance and service of summons "plaintiff" shall include any party seeking the issuance and service of summons, and "defendant" shall include any party upon whom service of summons is sought.

(D) Waiver of service of summons.

Service of summons may be waived in writing by any person entitled thereto under Rule 4.2 who is at least eighteen years of age and not under disability.

(E) Summons: Time limit for service.

If a service of the summons and complaint is not made upon a defendant within six months after the filing of the complaint and the party on whose behalf such service was required cannot show good cause why such service was not made within that period, the action shall be dismissed as to that defendant without prejudice upon the court's own initiative with notice to such party or upon motion. This division shall not apply to out-of-state service pursuant to Rule 4.3 or to service in a foreign country pursuant to Rule 4.5.

Adopted eff. 7-1-70; amended eff. 7-1-71, 7-1-73
7-1-75, 7-1-84.

**CONSTITUTIONAL PROVISION CONFERRING
RULE MAKING POWER UPON THE
SUPREME COURT OF OHIO**

Section 5(B) of Article IV of the Ohio Constitution reads as follows:

(B) The supreme court shall prescribe rules governing practice and procedure in all courts of the state, which rules shall not abridge, enlarge, or modify any substantive right. Proposed rules shall be filed by the court, not later than the fifteenth day of January, with the clerk of each house of the general assembly during a regular session thereof, and amendments to any such proposed rules may be so filed not later than the first day of May in that session. Such rules shall take effect on the following first day of July, unless prior to such day the general assembly adopts a concurrent resolution of disapproval. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

Courts may adopt additional rules concerning local practice in their respective courts which are not inconsistent with the rules promulgated by the supreme court. The supreme court may make rules to require uniform record keeping for all courts of the state, and shall make rules governing the admission to the practice of law and discipline of persons so admitted.